



May 30, 2002

Ms. Lisa B. Silva
Paralegal
Fort Worth I.S.D.
100 N. University Drive
Fort Worth, Texas 76107

OR2002-2914

Dear Ms. Silvia:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 163640.

The Fort Worth Independent School District (the "district") received a written request for, among other things, "complaints or allegations regarding the district's bus drivers and/or bus service." You state that some of the complaint information will be released to the requestor. You contend, however, that other responsive information is excepted from required public disclosure pursuant to the Family Educational Rights and Privacy Act of 1974 ("FERPA"). 20 U.S.C. § 1232g in conjunction with section 552.101 of the Government Code.¹

Section 552.026 of the Government Code provides as follows:

This chapter does not require the release of information contained in education records of an educational agency or institution, except in conformity with [FERPA].

FERPA provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information, other than directory information, contained in a student's education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student. *See* 20 U.S.C. § 1232g(d). "Education records" are those records that contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution. *Id.* § 1232g(a)(4)(A).

¹Although you also suggest that the telephone numbers of certain complainants are excepted from public disclosure because the district has "no way of knowing if the complainant would want their [sic] numbers released to persons outside of the school district," you have not raised an exception to required public disclosure for this information.

Information must be withheld from required public disclosure under FERPA only to the extent "reasonable and necessary to avoid personally identifying a particular student." Open Records Decision Nos. 332 (1982), 206 (1978).

We agree that some of the submitted documents constitute "education records" to the extent these records contain information about identifiable students or their parents. Consequently, those records must be released with the redaction of information tending to identify the district's students, e.g., the student's and parent's names, addresses and telephone numbers. We have also marked some additional information that the district must withhold to protect the identities of students (see green flags). The remaining portions of these documents must be released to the requestor, with the following exception.

We note that one of the records you submitted to this office contains an e-mail address. Section 552.137 of the Government Code makes certain e-mail addresses confidential and provides in relevant part:

- (a) An e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.
- (b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release. [Emphasis added.]

One of the submitted documents contains an e-mail address of a private individual. It does not appear to this office that that individual has affirmatively authorized the district to release the e-mail address. Accordingly, section 552.137 of the Government Code requires the district to withhold the e-mail address unless the individual who provided the e-mail address has affirmatively consented to its release.

We note, however, that some of the documents you submitted to this office are not directly related to district students, but rather solely concern the actions of school bus drivers. Such complaints do not constitute "education records" for purposes of FERPA. We therefore conclude that these documents must be released in their entirety. We have marked the submitted documents accordingly (see blue flags).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the

full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

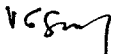
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



V.G. Schimmel
Assistant Attorney General
Open Records Division

VGS/RWP/sdk

Ref: ID# 163640

Enc: Submitted documents

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(w/o enclosures)